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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/617,598 | 07/11/2003 | Dean L. Kamen | 1062/D77 | 2911 |
| 2101 | 7590 | 08/26/2005 | EXAMINER | |
| BROMBERG & SUNSTEIN LLP 125 SUMMER STREET BOSTON, MA 02110-1618 | | | ROYAL, PAUL | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3611 | |

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/617,598

Applicant(s)

KAMEN ET AL.

Examiner

Paul Royal

Art Unit

3611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____

TECHNOLOGY CENTER 3600
SUPERVISOR/PATENT EXAMINER
LESLIE D. MORRIS

P. Royal

Continuation of 11. does NOT place the application in condition for allowance because: Applicant' argues that the applied reference Kamen et al. (US 5,791,425) applies torque to the ground contacting element as a function of pitch but not as a function of attitude as attitude is defined in the instant invention where applicant's definition of attitude requires the platform to be oriented with respect to the local underlying surface and the "pitch" of Kamen et al. '425 is disclosed with respect to gravity (i.e. the vertical) but not the underlying surface.

Applicant's argument is not persuasive because, while Kamen et al. '425 does indicate the point of reference can be the inclination with respect to gravity, it is also indicates the point of reference can be with respect to the vertical and further teaches that the vertical point of reference with respect to the platform can be the ground (underlying surface).

Kamen et al. '425 expressly teaches that the chair (461) is part of an assembly which includes the drive clusters (462) and that the cluster drives function to affect a height change in the seat (461), see column 20, line 42- column 21, line 3. Specifically see column 20, lines 53-55. The cluster (462) which is the ground contacting motor driven wheels, also includes linkages which extend to the seat and thereby apply torque of the cluster to the height adjustment of the seat.

Further, applicant's arguments at page 6, lines 6-14 appear to admit that in the lean mode sensors A and B sense the pitch and the cluster balancing algorithm applies torque to the cluster motors. The argument that the pitch is different from applicant's attitude is not persuasive because sensors A and B use the local surface (ie, steps or risers) as the point of reference which is understood to anticipate applicant's definition of the attitude being with respect to the local underlying surface.